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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

AUG 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotment)	MM Docket No. 97-130
FM Broadcast Stations)	
(Galesburg, Illinois, and)	
Ottumwa, Iowa))	RM-8751
)	

TO: Chief, Allocations Branch

REPLY COMMENTS OF GALESBURG BROADCASTING COMPANY

Galesburg Broadcasting Company ("GBC"), licensee of Station WGBQ(FM), Galesburg, Illinois,¹ by its attorney, in response to the Public Notice of August 1, 1997 (Report No. 2215), hereby submits its reply comments directed to the "Counterproposal" of Gillbro Communications Limited Partnership "to substitute Channel C (sic) for Channel 224 (sic) at Ottumwa, Iowa," for Gillbro's Station KTWB.² Such counterproposal is in conflict with the GBC proposal to amend the Table of FM Allotments to substitute Channel 224B1 for Channel 224A at Galesburg, Illinois.

In its Comments filed herein on July 7, GBC pointed out that the Gillbro application/counterproposal filed in March 1996 did

¹ Galesburg Broadcasting Company acquired the license of WGBQ on July 2, 1997, pursuant to Commission consent granted May 16, 1997 (File No. BALH-970320GG), and its call sign was changed to WLSR effective July 3. In the interest of consistency, these comments will continue to refer to the station as WGBQ.

² GBC reserves the right to file further comments directed to whatever "engineering data on the comparative merits of its upgrade proposal" KTWB submits in response to the August 1 Public Notice.

not consider the pending Petition for Rulemaking of GBC's predecessor-in-interest, Northern Broadcast Group, Inc., to upgrade Station WGBQ.

Moreover, GBC noted, Gillbro ignored KTWB's own recent history. After successfully petitioning the Commission to modify the Table of Allotments to upgrade its Class A allotment to Class C3 (5 FCC Rcd 4685), Gillbro applied for and received a construction permit for a Class C3 operation by KTWB (See File No. BPH-901019IA, granted February 26, 1991), but on August 18, 1992 (less than a week before its permit was due to expire), Gillbro's counsel wrote the Commission, advising that Gillbro would not construct the C3 facilities, and requesting cancellation of the construction permit.

Thirteen months later, on September 23, 1993, the Commission sent Gillbro a letter by certified mail. Therein, noting the foregoing history, and the fact that Gillbro had taken no further action to implement its C3 allotment, the Commission stated:

" . . . KTWB is presently receiving the benefit of Class C3 protection while only providing the service of a Class A station. Failure to implement Class C3 facilities in a timely manner constitutes 'warehousing' of unused spectrum to the preclusion of other potential users seeking to provide additional broadcast service to the public. . . .

"Please note that, if you intend to apply for Class C3 facilities, you must submit a construction permit application on FCC Form 301. If this application is filed before any conflicting rulemaking is initiated, the application will take precedence. If filed later, the application will be subject to the outcome of the rulemaking proceeding. Report and Order, Docket 91-348, 7 FCC Rcd 4917, 57 Fed. Reg 36018, released August 4, 1992. If you do not intend to apply for Class C3 facilities and wish to remain a Class A station (with no changes to the licensed operation), you must submit an application on FCC Form 302-

FM to modify KTWa's license and include a statement specifically requesting that the Ottumwa, IA Channel 224 allotment be DOWNGRADED to Class A status." (Emphasis added, footnote omitted).

Gillbro ignored the Commission's advice: It neither refiled for a Class C3 construction permit, nor filed a modification of license application to downgrade to Class A status. Thus, KTWa has continued to perpetuate the spectrum "warehousing" which the Commission condemned in 1993.

GBC urged in its Comments that consideration of KTWa's C2 upgrade application should be withheld, pending the outcome of the instant rulemaking, consistent with the Commission's September 23, 1993 letter to Gillbro. Even if given some consideration in the instant proceeding, KTWa's upgrade proposal should be treated with considerable skepticism, in view of Gillbro's failure to implement its previously authorized Class C3 upgrade; its failure to follow the prescribed procedures to downgrade its Ottumwa allotment as spelled out in the Commission's letter; and its impermissible warehousing of spectrum for the past seven years.

In its Reply Comments of July 22, Gillbro denies that it has "warehoused" the 224C3 upgrade, asserting that from August 14, 1992, to November 14, 1995, the licensee was under the control of a trustee in bankruptcy, and thus "cannot be accused of 'warehousing' frequencies." The short answer to this attempted evasion is that the Commission's September 23, 1993 letter to Gillbro raising the "warehousing" issue followed by more than a

year the commencement of the trusteeship. Thus, the Commission implicitly recognized that the existence of the bankruptcy proceeding did not insulate the licensee from compliance with the Commission's rules and policies. A fortiori, it does not permit the licensee to ignore specific directives such as those in the Commission's September 1993 letter.

Conclusion

As GBC has urged previously, the Commission should promptly amend its FM Table of Allotments to substitute Channel 224B1 for 224A at Galesburg, Illinois, and dismiss the Gillbro application. Such action would require only the specification of a new reference site for KTWB's still unused 224C3 allotment, and would permit KTWB to achieve the upgrade which it sought seven years ago, and abandoned five years ago.

Respectfully submitted,

GALESBURG BROADCASTING COMPANY

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August 18, 1997


Certificate of Service

I, Donald E. Ward, hereby certify that on this 18th day of August, 1997, I have served the foregoing Reply Comments by placing copies thereof in the U.S. Mail, postage prepaid, and addressed to the following:

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